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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION**

JAMES LESMEISTER, Individually and on behalf of others similarly situated,

PLAINTIFF,

v.

SELECTIVE SERVICE SYSTEM; LAWRENCE G. ROMO, as Director of SELECTIVE SERVICE SYSTEM; and DOES 1 through 50, Inclusive,

DEFENDANTS.

**Civil Action No. 4:16-cv-03362**

**NOTICE OF PLAINTIFF'S MOTION FOR  
LEAVE TO FILE FIRST AMENDED  
COMPLAINT AND TO CHANGE VENUE**

**Request for Telephonic  
Appearance or Decision without  
Appearances**

**Honorable Gray H. Miller  
Action Filed: April 4, 2013**

21 PLEASE TAKE NOTICE that pursuant to United States Code, Title  
22  
23 28, Section 1404(a), Plaintiff will bring the following Motion for  
24 Leave to File a First Amended Complaint and to Change Venue to the  
25 District Court of California, either in Central District (where the  
26 case was originally filed), or in the Southern District.  
27

This Motion is based on the facts that Plaintiff wishes to add National Coalition For Men ("NCFM"), who was previously dismissed without prejudice for lack of organizational standing, and to add NCFM member Anthony Davis (together, NCFM and Davis will be hereinafter called "Proposed Plaintiffs"), and that NCFM's national headquarters is located in San Diego, California, Davis is a resident of San Diego, California, and counsel for Plaintiff and Proposed Plaintiffs resides and practices in Los Angeles, California. This motion is based on the Memorandum attached hereto, and the proposed First Amended Complaint filed herewith. This Motion is made following a conference pursuant to Local Rule 6(c)1.

Respectfully Submitted,

Law Office of Marc E. Angelucci

Date: 1/26/17

By: // Marc E. Angelucci //  
Marc E. Angelucci, Esq.  
Attorney for Plaintiff,  
James Lesmeister

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**Civil Action No. 4:16-cv-03362**

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT AND TO CHANGE VENUE**

**Honorable Gray H. Miller**  
**Action Filed: April 4, 2013**

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22  
**I. FACTUAL AND PROCEDURAL BACKGROUND**

23 On April 4, 2013, Plaintiff, and NCFM, filed this lawsuit  
24 challenging the Constitutionality of the sex discrimination in the  
25 Military Selective Service Act ("MSSA") requiring only males to  
26 register for the draft.  
27

1 On July 29, 2013 the United States District Court, Central  
2 District of California ("Central District Court of California") in  
3 Los Angeles granted Defendants' Motion to Dismiss on the sole ground  
4 that the case was not ripe. Plaintiffs appealed.

5 On February 19, 2016, the United States Court of Appeal, Ninth  
6 Circuit, reversed the order. On remand, Defendants filed another  
7 Motion to Dismiss in which they challenged Plaintiffs' standing.

8 On November 9, 2016, the Central District of California ruled  
9 that Lesmeister has standing, but NCFM does not have associational  
10 standing because NCFM did not name any members who would have  
11 standing. NCFM was dismissed without prejudice and the court  
12 transferred the case to the Southern District Court of Texas,  
13 Houston Division ("Southern District Court of Texas"), where  
14 Lesmeister, resides. On November 16, 2016, the Southern District  
15 Court of Texas ordered the parties to file a joint case management  
16 plan by December 30, 2016.

17 On November 16, 2016, Defendants emailed Plaintiff's counsel  
18 stating Defendants intend to file another motion to dismiss to  
19 address issues the Central District of California did not address,  
20 and Defendants requested an agreement on an extension of time to  
21 file an answer or motion to dismiss.

22 On December 1, 2016, Plaintiff replied stating they intend to  
23 amend their complaint to add NCFM and a member of NCFM in San Diego,

1 and asked whether Defendants would oppose the motion. On December 2,  
2 2016, Defendants replied that would not oppose a motion to amend as  
3 long as the parties can agree on the response deadline, but that  
4 they cannot say whether they would oppose the motion to transfer  
5 until they see the motion itself.  
6

7 On December 9, 2016, Plaintiff and Defendants filed a joint  
8 motion requiring Plaintiff (and Proposed Plaintiffs) to file their  
9 motion by January 27, 2017, Defendants to respond by February 15,  
10 2017, Plaintiff to reply by February 27, 2017, and Defendants to  
11 respond to the operative complaint within 45 days of the date of  
12 entry of the amended complaint if leave to amend is granted.  
13

14 **II. REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

15 This motion to amend is unopposed by Defendants. Plaintiff and  
16 NCFM filed herewith a proposed First Amended Complaint that adds  
17 NCFM and Davis as plaintiffs, and respectfully request leave to  
18 amend so that NCFM and Davis can be included as plaintiffs.  
19

20 An organization that has not suffered any injury itself may  
21 nevertheless sue in a representative capacity for injuries of its  
22 members by alleging that (1) At least one member has standing in his  
23 or her own right to present the claim asserted by the association;  
24 (2) The interests sought to be protected are germane to the  
25 association's purpose; and (3) Neither the claim asserted nor the  
26 relief requested requires that the members participate individually  
27

1 in the suit. *Hunt v. Washington State Apple Advertising Comm'n* (432  
2 US 333, 343 (1977)). As long as resolution of the claims benefits  
3 the organization's members and the claims can be proven by evidence  
4 from representative injured members, the participation of those  
5 individual members will not thwart associational standing.  
6 *Association of American Physicians & Surgeons, Inc. v. Texas Med.*  
7 *Bd.* (5<sup>th</sup> Cir. 2010). 627 F.2d 547, 522.

8 In this case, NCFM has associational standing because, as  
9 Paragraph 5 of the First Amended Complaint allege, some NCFM  
10 members, including Plaintiff Davis, would otherwise have standing to  
11 sue in their own right, the interests NCFM seeks to protect are  
12 germane to NCFM's purpose and neither the claim asserted, nor the  
13 relief requested, requires the participation of individual NCFM  
14 members in this lawsuit. And as Paragraph 6 of the First Amended  
15 Complaint asserts, some of NCFM's members are males ages 18-25 or  
16 who will be age 18-25 at some time relative to this lawsuit and the  
17 relief it seeks, are harmed by or subject to the sex-discriminatory  
18 registration requirements, are United States citizens, are not  
19 members of the military or students at military academies or  
20 otherwise exempt from the draft, and support equal treatment of  
21 males and females, and some NCFM's members have or are likely to  
22 have male children or loved ones who meet the criteria.

1 Davis, a member of NCFM, has standing for the same reasons  
2 Lesmeister has already been found to have standing by the Central  
3 District of California. He is a male within the age of 18-25, a  
4 resident and U.S. citizen residing in San Diego, California, is in  
5 the age group required by Defendants to register for the military  
6 draft and has recently registered for the military draft as is  
7 required of him as a male, is harmed by or subject to the sex-  
8 discriminatory registration requirements, is not a members of the  
9 military or a student at military academies or otherwise exempt from  
10 the draft, and he supports equal treatment of males and females.  
11

12 Therefore, Plaintiff respectfully requests leave to file and  
13 First Amended Complaint filed herewith.<sup>1</sup>  
14

15 **III. REQUEST FOR A CHANGE OF VENUE TO THE DISTRICT OF CALIFORNIA**

16 Where venue is proper, courts may transfer to another district  
17 "for the convenience of parties and witnesses, in the interest of  
18 justice," if the transfer is to a district where the case might have  
19 been brought. 28 USC § 1404(a).  
20

21 A plaintiff's choice of forum is accorded substantial weight in  
22 proceedings under 28 USC § 1404(a). *Securities Investor Protection*  
23

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25 <sup>1</sup> The First Amended Complaint filed concurrently herewith also omits  
26 two causes of action that were previously in the initial Complaint  
27 but later dismissed, namely, Count II (Violation of Fourteenth  
Amendment) and Count III (Violation of 28 U.S.C. § 1983).

1      *Corp. v. Vigman* (9<sup>th</sup> Cir. 1985) 764 F.2d 1309, 1317; *Lewis v. ACB*  
2      *Business Services, Inc.* (6<sup>th</sup> Cir. 1998) 135 F3d 389, 413.

3      Of course, a Plaintiff's choice should not be given "inordinate"  
4      weight. *In re TS Tech USA Corp* (Fed Cir. 2008) 551 F2d 1315, 1320.  
5      And the venue transfer provisions of Section 1404(a) "are not meant  
6      to merely shift the inconvenience to the plaintiff." *Reed Elsevier,*  
7      *Inc. v. Innovator Corp.* (SD OH 2000) 105 F. Supp.2d 816, 821.

8      Plaintiff and NCFM chose to file this action in the Central  
9      District of California because NCFM's national office is in San  
10     Diego, California, a two hour drive from Los Angeles, and NCFM has  
11     no office in Texas. Also, NCFM is represented on a non-profit basis  
12     by a Los Angeles attorney. Thus, the Central District of California  
13     is the most convenient forum. Defendants will likely continue to  
14     challenge NCFM's standing, so NCFM's person most knowledgeable may  
15     have to testify. Associational standing has additional requirements  
16     beyond what individual plaintiffs must establish. Davis will  
17     probably have to testify as well, which makes at least two  
18     plaintiffs in California that will likely have to testify.

22     Between Los Angeles and San Diego, the Los Angeles court would  
23     also be most convenient for counsel for Plaintiff and Proposed  
24     Plaintiffs. Nonetheless, San Diego is only a 2 hour drive, so the  
25     Central or Southern districts are both more convenient than Texas.

27     Courts have held that, where a plaintiff is a private individual  
28

1 and defendant is a large corporation, defendant's assertion  
2 regarding monetary expense and difficulty in litigating in a distant  
3 forum are likely to be disregarded. *Miracle v. NYP Holdings, Inc.*  
4 (D HI 200) 87 F.Supp,2d 1060, 1073). Thus, the capacities of the  
5 parties are considered in determining convenience of the forum.  
6

7 In this case, NCFM is a non-profit organization with its national  
8 office in San Diego, California, and with no office in Texas.  
9 Counsel for Plaintiff, and for NCFM and Davis, resides and practices  
10 in Los Angeles, California. By contrast, Defendants are the federal  
11 government, and their attorneys have offices in both Los Angeles and  
12 San Diego. They are not inconvenienced by having the venue in  
13 California. Nor have they ever alleged they are unduly burdened by  
14 the case being in California. Having the venue in California would  
15 require the least amount of travel for all counsel in this case.  
16

17 Plaintiffs do not contend that venue in Texas is improper.  
18 However, it is worth noting where there is no real property involved  
19 in the action, venue is proper where the plaintiffs reside (28  
20 U.S.C. § 1391, subd. (e)(1)(C)), and a non-profit organization  
21 "resides" where they have an office. *Center for Biological Diversity*  
22 v. *National Science Foundation*, D.C.Cal.2002, 2002 WL  
23 31548073, 55 ERC 1873; *Natural Resources Defense Council v. Abraham*,  
24 C.A.9th, 2001, 244 F.3d 742. In this case, NCFM's national office  
25 is in San Diego, California, and NCFM has no office in Texas.  
26  
27

1 Moreover, the events giving rise to the cause of action  
2 substantially occur in California, the most populous state, as men  
3 in California are subject to and register under the MSSA, while  
4 similarly situated women are not required or allowed to register.

5 Therefore, Plaintiff respectfully requests that venue transfer  
6 to the District Court of California, either the Central District  
7 near Los Angeles, or the Southern District near San Diego.

9 **IV. REQUEST FOR TELEPHONIC APPEARANCE OR HEARING WITHOUT APPEARANCES**

10 Plaintiff's attorney lives and practices in California.  
11 Accordingly, for the sake of judicial economy and convenience,  
12 Plaintiff requests that this Motion be decided either by telephonic  
13 appearance, or on the pleadings alone without any appearances.

15 **CONCLUSION**

16 For the foregoing reasons, Plaintiffs respectfully request that  
17 this honorable Court grant leave to file the concurrently filed  
18 First Amended Complaint, and that the case be transferred to the  
19 United States District Court of California, either the Southern  
20 District or the Central District.

22 Respectfully Submitted.

23 Law Office of Marc E. Angelucci  
24

25 Date: 1/26/17

26 By: // Marc E. Angelucci //  
27 Marc E. Angelucci, Esq.  
Attorney for Plaintiff,  
James Lesmeister

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2  
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on December 9, 2016, I electronically  
5 filed a copy of the foregoing. Notice of this filing will be sent  
6 via email to all parties by operation of the Court's electronic  
7 filing system. Parties may access this filing through the Court's  
8 CM/ECF System.

9  
10 Date: 1/26/17 By: // Marc E. Angelucci //

11  
12 **CERTIFICATE OF CONFERENCE**

13 I hereby certify that I conferred with Defendants' counsel  
14 about the relief requested in the foregoing and Defendants' counsel  
15 indicated Defendants' would not oppose the motion to amend as long  
16 as we agreed on a scheduling order, which we have agreed to and  
17 filed with the Court. Defendants' counsel stated they cannot  
18 indicate whether they would oppose the Motion to Change Venue until  
19 they see the motion itself.

20  
21 Date: 1/26/17 By: // Marc E. Angelucci //

IN THE UNITED STATES DISTRICT COURT

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PLAINTIFF,

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SELECTIVE SERVICE SYSTEM;  
LAWRENCE G. ROMO, as Director of  
SELECTIVE SERVICE SYSTEM; and  
DOES 1 through 50, Inclusive,

DEFENDANTS.

ORDER ON NOTICE OF PLAINTIFF'S  
MOTION FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT AND TO CHANGE  
VENUE

Request for Telephonic  
Appearance or Decision without  
Appearances

Honorable Gray H. Miller  
Action Filed: April 4, 2013

GOOD CAUSE APPEARING, Plaintiff's Motion for Leave to File a First Amended Complaint and to Change Venue is granted. The First Amended Complaint filed concurrently with said Motion is deemed filed as of \_\_\_\_\_, 2017. The case shall be transferred to

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<sup>10</sup> See, for example, the discussion of the 1992 Constitutional Convention in the *Constitutional Convention of 1992: The Final Report* (1993).

DATE: \_\_\_\_\_

DISTRICT COURT JUSTICE

12

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE FIRST AMENDED  
COMPLAINT AND TO CHANGE VENUE